

assumpsit may be maintained thereon as on a sale of goods, *Wolfe v. Hauver*, 1 Gill, 84, where an objection of the Statute was overruled in the Court of Appeals because not taken below; *Morgan v. Bitzenberger*, 3 Gill, 350. So if in other respects a contract be executed so far as regards land, and the promise sued on relates wholly to money, the action may be maintained although the promise was not in writing, *Green v. Saddington*, 7 E. & B. 503.³³ So in *Lavery v. Turley*, 6 Hurl. & N. 239, in an action for goods sold, the defendant pleaded an agreement, that in consideration that the defendant would give up possession of a public-house and stock in trade, the plaintiff would pay the defendant 100*l.*, and give up and discharge the defendant from the causes of action in the declaration, and the plea averred payment of the 100*l.* and the delivery of possession; and it was held, that evidence of a parol agreement by way of accord and satisfaction was admissible in support of the plea, though to enforce the delivery of possession it might be necessary to show a contract in writing. And as the contract is not illegal, an acknowledgment by one of the parties, who has enjoyed the benefit of the contract, that the consideration is due will support a count on an account stated, *Cocking v. Ward supra*; *Knowles v. Mitchell*, 13 East, 249.³⁴ So it has been determined a number of times, that if articles be accepted under a contract either altogether, or in part, within the Statute, their value may be sued for upon a *quantum meruit*, on the implied contract arising from their acceptance, see *Lord Falmouth v. Thomas*, 1 Cr. & M. 109; *Mavor v. Pyne*, 3 Bing. 285; *Teal v. Auty*, 2 Brod. & Bing. 99, and the notes to *Peter v. Compton*, 1 Smith Lead. Cas. 143. But with respect to agreements to be performed within a year, the cases of *Donellan v. Read*, 3 B. & Ad. 899, and *Boydell v. Drummond*, 11 East, 159, to the effect that a complete performance by one of the parties within the year will take the case out of the Statute, but that a part performance will not have that operation, were approved in *Ellicott v. Peterson*, 4 Md. 476.³⁵ On the other hand, where a guarantor by parol of the soundness of a horse paid the price to the vendor at the purchaser's request, it was held that the latter could not rely upon the void guarantee as a defence to an action against him by the guarantor to recover the sum so paid, *Glenn v. Rogers*, 3 Md. 312.

Special promise by executors and administrators.—With respect to
524 *promises by executors, &c.; where one promised the widow of an intestate, that if she would permit him to be joined in the administration he would make good any deficiency of assets to discharge the debts, the case was determined to be without the Statute because the party was not administrator at the time of the promise, *Tomlinson v. Gill*, Amb. 330; see *Gregory v. Williams*, 3 Mer. 590. But, no doubt, ordinarily a promise

³³ Where one advances money to another under a verbal agreement to invest it for the former's benefit in the erection of houses on land belonging to the latter, a court of equity will decree its repayment though the contract be void under the Statute. *Schroeder v. Loeber*, 75 Md. 199. Cf. *Pulbrook v. Lawes*, 1 Q. B. D. 284.

³⁴ *Pool v. Horner*, 64 Md. 131.

³⁵ See note 70 *infra*.